



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1228

Dear Mr. Peck:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29197.

The Texas Department of Criminal Justice (the "department") has received a request for certain information relating to an internal investigation of a departmental employee. You submitted the requested information to this office for review and claim that the information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.¹

You assert that section 552.108 is applicable to the records at issue. To show the applicability of this exception, it either must be apparent on the face of the records how release would interfere with law enforcement and crime prevention or you must demonstrate how release would interfere with these interests. However, it is not apparent on the face of the documents nor have you shown that release of these records will interfere with law enforcement and crime prevention. *See* Open Records Decision No. 531 (1989). Thus, the records may not be withheld under section 552.108.

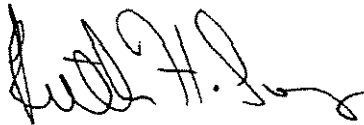
¹You state that you are not seeking a decision about employee social security numbers or polygraph test results. Thus, we do not address this type of information in this decision.

However, some of the information at issue is excepted from disclosure by a common-law right of privacy under section 552.101. Information is excepted from disclosure under common-law privacy if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of common-law privacy under *Industrial Foundation* to the files of an investigation into allegations of sexual harassment. The *Ellen* court ordered the release of the affidavit of the person being investigated for sexual harassment and the summary of the investigation. However, identifying information about the witnesses and victims were redacted from these documents prior to release. *Id.*

The court concluded that the public's interest was sufficiently served by the disclosure of these documents without releasing statements by the victims and witnesses. *Id.* We note that the court did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy in his identity. However, since the court held that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation, we believe that there is a legitimate public interest in the identity of the accused employee. The information you submitted to this office contains a summary and findings. You must release the summary and findings, with identifying information about the victims and witnesses redacted, as marked. The other information must be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Enclosures: Marked documents

Ref.: ID# 29197

cc: Ms. Debbi Louder
AFSCME
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Gatesville, Texas 76528
(w/o enclosures)